

ASSEMBLY BILL

No. 1709

Introduced by Assembly Member Mitchell

February 15, 2012

An act to amend Sections 701, 702, 704, and 706 of, and to add Section 679.5 to, the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1709, as introduced, Mitchell. Juveniles: jury trial.

Existing law provides that any person under 18 years of age who commits a crime is within the jurisdiction of the juvenile court, except as specified. The juvenile court must adjudicate a petition to declare a detained minor a ward of the court within 15 days after the petition is filed. Existing law, contained in 2 initiative statutes, commonly known as the Three Strikes law, requires increased penalties for certain recidivist offenders in addition to any other enhancement or penalty provisions that may apply. Existing law requires that if a defendant has 2 or more prior violent or serious felony convictions, the term for the current felony conviction shall be an indeterminate term of imprisonment in the state prison for life with a minimum term to be served, as specified. Under certain circumstances, a juvenile adjudication constitutes a violent or serious felony conviction under those provisions.

This bill would provide that a youth who is 16 years of age or older at the time of the commission of an offense that could be used as a future felony conviction under the Three Strikes law is entitled to a jury trial in the juvenile court. Under this bill, the jury trial would proceed in the same manner as a jury trial in criminal court. This bill would provide that the right to a jury trial does not affect the right of a detained minor to adjudication of the petition to declare him or her a ward of the

court within 15 days of the filing of the petition. This bill would also make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 679.5 is added to the Welfare and
2 Institutions Code, to read:

3 679.5. (a) A youth who is 16 years of age or older at the time
4 of the commission of an offense, which, upon admission or
5 adjudication, could be used as a future felony conviction under
6 paragraph (3) of subdivision (d) of Section 667 of the Penal Code
7 or under paragraph (3) of subdivision (b) of Section 1170.12 of
8 the Penal Code, shall be entitled to a jury trial.

9 (b) A jury trial under this section shall proceed as provided in
10 Chapter 7 (commencing with Section 1041) and Chapter 8
11 (commencing with Section 1046) of Title 6 of, and Title 7
12 (commencing with Section 1065) of, Part 2 of the Penal Code.

13 (c) This section does not affect the right of a detained youth
14 under Section 657 to a trial within 15 days of the filing of the
15 petition to declare the youth a ward of the court.

16 SEC. 2. Section 701 of the Welfare and Institutions Code is
17 amended to read:

18 701. At the hearing, the court *or jury as provided by Section*
19 *679.5* shall ~~first~~ consider only the question whether the minor is a
20 person described by Section 300, 601, or 602. The admission and
21 exclusion of evidence shall be pursuant to the rules of evidence
22 established by the Evidence Code and by judicial decision. Proof
23 beyond a reasonable doubt supported by evidence, legally
24 admissible in the trial of criminal cases, must be adduced to support
25 a finding that the minor is a person described by Section 602, and
26 a preponderance of evidence, legally admissible in the trial of civil
27 cases must be adduced to support a finding that the minor is a
28 person described by Section 300 or 601. When it appears that the
29 minor has made an extrajudicial admission or confession and denies
30 the same at the hearing, the court may continue the hearing for not
31 to exceed seven days to enable the prosecuting attorney to subpoena
32 witnesses to attend the hearing to prove the allegations of the
33 petition. If the minor is not represented by counsel at the hearing,

1 it shall be deemed that objections that could have been made to
2 the evidence were made.

3 SEC. 3. Section 702 of the Welfare and Institutions Code is
4 amended to read:

5 702. After hearing the evidence, the court *or jury as provided*
6 *by Section 679.5* shall make a finding, noted in the minutes of the
7 court, whether or not the minor is a person described by Section
8 300, 601, or 602. If ~~it~~ *the court or jury* finds that the minor is not
9 such a person, ~~it~~ *the court* shall order that the petition be dismissed
10 and the minor be discharged from any detention or restriction
11 theretofore ordered. If the court *or jury* finds that the minor is such
12 a person, ~~it~~ *the court* shall make and enter ~~its~~ *those* findings and
13 order accordingly, and shall then proceed to hear evidence on the
14 question of the proper disposition to be made of the minor. Prior
15 to doing so, ~~it~~ *the court* may continue the hearing, if necessary, to
16 receive the social study of the probation officer, to refer the minor
17 to a juvenile justice community resource program as defined in
18 Article 5.2 (commencing with Section 1784) of Chapter 1 of
19 Division 2.5, or to receive other evidence on its own motion or the
20 motion of a parent or guardian for not to exceed 10 judicial days
21 if the minor is detained during the continuance. If the minor is not
22 detained, it may continue the hearing to a date not later than 30
23 days after the date of filing of the petition. The court may, for good
24 cause shown continue the hearing for an additional 15 days, if the
25 minor is not detained. The court may make ~~such~~ *an* order for
26 detention of the minor or his or her release from detention, during
27 the period of the continuance, as is appropriate.

28 If the minor is found to have committed an offense which would
29 in the case of an adult be punishable alternatively as a felony or a
30 misdemeanor, the court shall declare the offense to be a
31 misdemeanor or felony.

32 SEC. 4. Section 704 of the Welfare and Institutions Code is
33 amended to read:

34 704. (a) If the court *or jury as provided by Section 679.5* has
35 determined that a minor is a person described by Section 602, or
36 if the court has determined that a minor is a person described by
37 Section 601 and a supplemental petition for commitment of ~~such~~
38 *the* minor to the ~~Youth Authority~~ *Department of Corrections and*
39 *Rehabilitation, Division of Juvenile Facilities* has been filed
40 pursuant to Section 777, and ~~such~~ *the* minor is otherwise eligible

1 for commitment to the ~~Youth Authority~~ *Department of Corrections*
2 *and Rehabilitation, Division of Juvenile Facilities*, the court, if it
3 concludes that a disposition of the case in the best interest of the
4 minor requires ~~such that~~ observation and diagnosis ~~as can~~ be made
5 at a diagnostic and treatment center of the ~~Youth Authority~~
6 *Department of Corrections and Rehabilitation, Division of Juvenile*
7 *Facilities*, may continue the hearing and order that ~~such the~~ minor
8 be placed temporarily in ~~such~~ a center for a period not to exceed
9 90 days, with the further provision in ~~such the~~ order that the
10 Director of the ~~Youth Authority~~ *Department of Corrections and*
11 *Rehabilitation, Division of Juvenile Facilities* report to the court
12 its diagnosis and recommendations concerning the minor within
13 the 90-day period.

14 (b) The ~~Director of Youth Authority~~ *Chief of the Department*
15 *of Corrections and Rehabilitation, Division of Juvenile Facilities*
16 shall, within the 90 days, cause the minor to be observed and
17 examined and shall forward to the court his diagnosis and
18 recommendation concerning ~~such that~~ minor's future care,
19 supervision, and treatment.

20 (c) The ~~Youth Authority~~ *Department of Corrections and*
21 *Rehabilitation, Division of Juvenile Facilities* shall accept ~~such~~
22 *the* person if there is in effect a contract made pursuant to Section
23 1752.1 and if it believes that the person can be materially benefited
24 by such diagnostic and treatment services, and if the ~~Director~~ *Chief*
25 of the ~~Youth Authority~~ *Department of Corrections and*
26 *Rehabilitation, Division of Juvenile Facilities* certifies that staff
27 and institutions are available. No such person shall be transported
28 to any facility under the jurisdiction of the ~~Youth Authority~~
29 *Department of Corrections and Rehabilitation, Division of Juvenile*
30 *Facilities* until the ~~director~~ *chief* has notified the referring court
31 of the place to which ~~said that~~ person is to be transported and the
32 time at which he can be received.

33 (d) The probation officer of the county in which an order is
34 made placing a minor in a diagnostic and treatment center pursuant
35 to this section, or any other peace officer designated by the court,
36 shall execute the order placing ~~such the~~ minor in the center or
37 returning him therefrom to the court. The expense of ~~such the~~
38 probation officer or other peace officer incurred in executing ~~such~~
39 *that* order is a charge upon the county in which the court is situated.

1 SEC. 5. Section 706 of the Welfare and Institutions Code is
2 amended to read:

3 706. After *a* finding that a minor is a person described in
4 Section 601 or 602, the court shall hear evidence on the question
5 of the proper disposition to be made of the minor. The court shall
6 receive in evidence the social study of the minor made by the
7 probation officer and any other relevant and material evidence that
8 may be offered, including any written or oral statement offered by
9 the victim, the parent or guardian of the victim if the victim is a
10 minor, or if the victim has died or is incapacitated, the victim's
11 next of kin, as authorized by subdivision (b) of Section 656.2. In
12 addition, if the probation officer has recommended that the minor
13 be transferred to the Department of Corrections and Rehabilitation,
14 Division of Juvenile ~~Justice~~ *Facilities* pursuant to an adjudication
15 for an offense requiring him or her to register as a sex offender
16 pursuant to Section 290.008 of the Penal Code, the SARATSO
17 selected pursuant to subdivision (d) of Section 290.04 of the Penal
18 Code shall be used to assess the minor, and the court shall receive
19 that risk assessment score into evidence. In any judgment and order
20 of disposition, the court shall state that the social study made by
21 the probation officer has been read and that the social study and
22 any statement has been considered by the court.